



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1995

Mr. James L. Dougherty, Jr.
Cole & Dougherty
5300 Memorial, Suite 1070
Houston, Texas 77007

OR95-117

Dear Mr. Dougherty:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29972.

The City of West University Place (the "city"), which you represent, received an open records request for all records held by the city's police department regarding two incidents of domestic violence at a particular address. You state that the city has released to the requestor most of the requested information. You inquire, however, as to whether certain portions of two incident reports come under the protection of section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In Open Records Decision No. 611 (1992), this office discussed the public nature of information found in police reports concerning domestic violence. Open Records Decision No. 611 concluded that not all information regarding investigations of family violence is protected by common-law privacy.

We cannot categorically maintain that information regarding violence between family members is highly intimate and embarrassing and of no public interest. An assault by one family member on another is a crime, not a family matter normally considered private. On the other hand, we can envision some circumstances under which the details of an assault and, possibly, the identity of the victim would be excepted from disclosure by common-law privacy. For example, if one family member *sexually assaults* another, at least some of the information in the police department's file would be excepted from required public disclosure. . . . The determination of whether the information in the file can be excepted from disclosure must be made on a case-by-case basis. [Emphasis added; citations deleted.]

After reviewing the records at issue, we have determined that none of the information you have marked is sexual in nature or is otherwise so "highly intimate and embarrassing" that it implicates third parties' privacy interests. Common-law privacy does not protect this information.

You also inquire whether the information you have marked is protected by constitutional privacy. See *Industrial Found.*, 540 S.W.2d at 678 (section 552.101 also embraces constitutional privacy). The constitutional right to privacy consists of two related interests: (1) the individual interest in independence in making certain kinds of important decisions, and (2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These "zones" include matters related to marriage, procreation, contraception, family relationships, and child rearing and education and are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the records at issue do not concern intimate aspects of individuals' private affairs, but rather directly pertain to a criminal assault that the alleged victim sought to end through police intervention. The city may not withhold any of these records under either constitutional or common-law privacy.

You also inquire whether the city must withhold the alleged victim's social security number. We note at the outset that this information is not protected by privacy. Open Records Decision Nos. 226 (1979); 169 (1977) at 7-8. However, as noted above,

section 552.101 also protects information deemed confidential by statute. This office recently concluded in Open Records Decision No. 622 (1994) at 3 that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the alleged victim's social security number was obtained or is maintained pursuant to such a statute and is therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(vii) of the United States Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 29972

Enclosures: Submitted documents

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(w/o enclosures)

¹We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the city should ensure that it has not obtained or maintained the social security number pursuant to any provision of law enacted on or after October 1, 1990.